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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/774,847	01/31/2001	Harald Krondorfer	1466	6258
7590 11/01/2005 STRIKER, STRIKER & STENBY 103 East Neck Road Huntington, NY 11743			EXAMINER WEEKS, GLORIA R	
			ART UNIT 3721	PAPER NUMBER

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/774,847

Applicant(s)

KRONDORFER ET AL.

Examiner

Gloria R. Weeks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-26 is/are pending in the application.
- 4a) Of the above claim(s) 12, 13 and 18 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23 is/are allowed.
- 6) ☒ Claim(s) 11, 14-17, 19-21 and 24-26 is/are rejected.
- 7) ☒ Claim(s) 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendments

1. This action is in response to Applicants' amendments and arguments received on July 18, 2005, all of which have been considered and acknowledged in this action.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 24 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 24 recites the limitation "not loaded" in line 5. It is unclear as to how the term "not loaded" structurally defines the safety element. The use of such phrase implies a function capable of application with Applicant's invention, rather than a structural limitation.

Claim 25 recites the phrase "safety element which is redundant and functionless" in lined 5-6 which renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d). The use of such a phrase is deemed contradictory in that it implies that the elements following the phrase are a matter of design choice and serve no function towards the structural integrity of Applicant's invention.

Election/Restrictions

4. Amendment to claim 11 to include the limitation of a "rigid" safety element contradicts with dependent claim 12, which includes the limitation of a "non-rigid" safety element. The Office Action mailed December 18, 2005 required an election of species, wherein a first species

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(figure 2) includes a “non-rigid” safety element, while a second species (figures 3-4) includes a “rigid” safety element. Applicant elected to pursue examination of the second species illustrated in figures 3 & 4 of Applicant’s invention. Therefore, examination of claim 12 and subsequent claim 13 have been withdrawn due to its limitations being directed towards a non-elected species.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

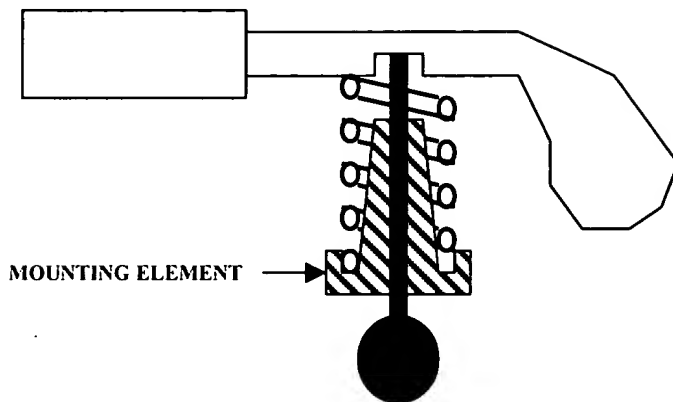
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 11, 14-17, 19, 20, 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Johansson et al. (USPN 5,749,421).

Regarding claims 11, 14-17, 19, 20 and 21, Johansson et al. discloses a hand power tool comprising: a housing (1); at least one handle having at least one gripping part (19); a mounting part (supports 40 within 35; *see illustration below*); at least one elastic, vibration damping element (35) mounted on the mounting part, the at least one gripping part (19) being mounted on the housing (11) through the elastic element (35) and through the mounting part; at least one movable and non-rigid safety element (40) through which the gripping part (19) is connected with the mounting part, the safety element (40) being movable relative to the gripping part in at least a tilting direction and a longitudinal direction (39) during a predetermined operation relative to the gripping part (13) to avoid a passage of vibration through the safety element (40), wherein the elastic element (35) surrounds the safety element (40).

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With respect to claim 24, Johansson et al. discloses, a hand power tool comprising: a housing (1); at least one handle having at least one gripping part (19); at least one elastic, vibration damping element (35); a mounting part (supports 40 within 35) on the elastic element (35; *see illustration above*); the at least one gripping part (19) being mounted on the housing (11) through the elastic element (35) and through the mounting part; at least one movable safety element (40).

In reference to claim 25, Johansson et al. discloses a hand power tool comprising: a housing (1); at least one handle having at least one gripping part (19); at least one elastic, vibration damping element (35); a mounting part (supports 40 within 35) on the elastic element (35; *see illustration above*); the at least one gripping part (19) being mounted on the housing (11) through the elastic element (35) and through the mounting part; at least one movable safety element (40).

Regarding claim 26, Johansson et al. discloses a hand power tool comprising: a housing (1); at least one handle having at least one gripping part (19); a mounting part (supports 40 within 35; *see illustration above*); at least one elastic, vibration damping element (35) mounted on the

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mounting part, the at least one gripping part (19) being mounted on the housing (11) through the elastic element (35) and through the mounting part; at least one movable and non-rigid safety element (40) through which the gripping part (19) is connected with the mounting part, the safety element (40) being movable relative to the mounting part in at least a tilting direction and a longitudinal direction (39) during a predetermined operation relative to the gripping part (13) to avoid a passage of vibration through the safety element (40), wherein the elastic element (35) surrounds the safety element (40).

Response to Arguments

7. Applicant's arguments, see pages 9-10, filed July 18, 2005, with respect to the rejection(s) of claim(s) 11 under 35 U.S.C. 102(b) as anticipated by Kato and Wilhelm have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Johansson et al..

Allowable Subject Matter

8. Claim 22 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: In light of the amendment filed on July 18, 2005 and further examination of the art of record, it has been decided that the art considered as a whole, alone or in combination, neither anticipates nor renders obvious the claimed hand power tool comprising a handle with a gripping part and a mounting part, wherein sleeves and discs are mounted on the mounting part and on the gripping

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part, with a safety element arranged the distance of the sleeves and the discs, in which the distance is filled with an elastic material.

9. Claim 23 is allowed

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R. Weeks whose telephone number is (571) 272-4473. The examiner can normally be reached on 8:30 am - 7:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



grw

October 27, 2005

Gloria R Weeks
Examiner
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SCOTT A. SMITH
PRIMARY EXAMINER